

REMARKS

Claims 4-10 are pending in the present application. Claims 4 was amended in this response to improve form. No new matter has been introduced as a result of the amendments. Favorable reconsideration is respectfully requested.

Claims 4, 6, 9 and 10 were rejected under 35 U.S.C §102(b) as being anticipated by Henderson ("ACM SIGCOMM Computer Communication Review, 1995). Claims 4-6 were rejected under 35 U.S.C. §102(b) as being anticipated by *A.S. Tannenbaum* "Computer Networks" (Prentice-Hall, 1996). Applicants respectfully traverse these rejections. Favorable reconsideration is requested.

Applicants first wish to address the Office Action's assertion that the claim language subsequent to the word "for" should be treated as an intended use, and thus vitiated from the claim. This is incorrect. The previously recited language provided functional limitations to the claims; and was not a statement of intended use. A functional limitation defines something by what it does, rather than by what it is (e.g., as evidenced by a specific structure or specific characterization). A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used (see MPEP 2173.05(g)). The functional limitation is used in association with the recited parts to define a particular capability or purpose that is served by the recited element or step. When evaluating the scope of a claim, every limitation in the claim must be considered. Office personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation. Instead, the claim as a whole must be considered (MPEP 2106(C)). Applicants submit the claims have met these requirements and that the treatment of the identified language as "intended use" was improper. Nevertheless, in an effort to further prosecution of the present application, the form of the claims has been amended to make clearer the limitations being recited.

Specifically, the prior art, alone or in combination, does not teach "a part that determines, based on protocol information which is contained in a control message received by the protocol device, whether the control message contains information that is newer than a current information state in the protocol device; and a part that updates the information state based on the determination" as recited in claim 4.

Regarding *Henderson*, the document merely discloses a SSCOP layer (FIG. 1), that provides control messages in an ATM architecture. *Henderson* is completely silent regarding the feature of determining whether the control message contains information that is newer than a current information state in the protocol device, and updating the information state based on the determination. Applicants submit that baldly concluding that “there is no reason to believe that the SSCOP layer is incapable of performing the functions” is improper. A claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described, in a single prior art reference (MPEP 2131). The Office Action conceded that the aforementioned limitation is not expressly found in *Henderson*, and the Office Action failed to provide any evidence of inherency within the document. As such, the rejection is improper and should be withdrawn.

Regarding *Tannenbaum*, the document discloses a transmission protocol (pgs. 203-204) where control information is embedded and concurrently sent along with user data information. As the user information data is provided with sequential numbering, *Tannenbaum* keeps track of updates to the control information simply by relying on the numbering of the user data messages (page 203). The present claims however, recite a control message, where a current state of the protocol device is determined through protocol information of a control message, and not through sequential numbering of user data messages. Furthermore, *Tannenbaum* does not teach the feature of updating the information state. The rationale based on “intended use” is wrong for the same reasons as given above.

In light of the above remarks, Applicant submit that claims 4-10 are in condition for allowance and request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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